

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:LAD:LA:TL-N-465-00
DRJojola

date:

to: Stan Teragawa, Innocent Spouse Coordinator, LA District

from: District Counsel, Los Angeles District, Los Angeles

subject: Statute of Limitation

You have sought Counsel's guidance on the various assessment statute dates that are possible in the referenced matter. According to the memorandum provided to Counsel, a return that was jointly filed on behalf of the taxpayers was selected for examination. During the course of the examination, the taxpayer husband (hereinafter TPH) requested relief from a determined joint liability pursuant to the provisions of I.R.C. § 6015.

In addition, to seeking such relief, the TPH represented that his signature on the purported joint return was forged. During the course of the examination, the TPH clarified his prior statements and acknowledged that 1) he had signed a joint return for the year in question and 2) authorized his wife to file such return on his behalf. Nevertheless, the TPH emphasized that the actual return that was filed with the Commissioner was not the return that the TPH signed or authorized. Counsel's guidance on the issue of whether a joint return was filed by the TPH has not been sought.

It is our opinion that a determination of what the applicable assessment statute dates are in the immediate case turns on the Commissioner's determination of whether the TPH jointly filed the return in question. If a determination is made that the TPH is a non-filer, [i.e. the TPH did not sign or authorize the joint return that was filed on his behalf] it is apparent that the TPH's determined tax liability can be assessed at any time. I.R.C. § 6501(c)(3). If a determination is made that the TPH signed or authorized the joint return that was filed on his behalf, it is equally clear that the period of limitation for assessment of the determined joint deficiency began to run with the filing of such return. I.R.C. § 6501(a). It is our opinion that regardless of what determination is made with respect to the TPH, the period for assessment of the determined deficiency due from the taxpayer wife runs from the filing date of the disputed joint return.

Based upon the information provided to Counsel, it is our opinion that a determination of whether the TPH jointly filed the individual return in question is problematic. Counsel is concerned that if a determination is made that the TPH is a non-filer, the TPH may at a later date repudiate his contention that he failed to sign or authorize the filing of the disputed joint return. If such repudiation takes place after the period for assessing a joint deficiency, the Commissioner could be faced with a situation where a determined joint liability cannot be timely assessed against the TPH and taxpayer wife.

In the immediate case, it is counsel's understanding that the taxable year under examination is [REDACTED]. Furthermore, it is our understanding that the purported joint return was timely filed. Thus, the general three year statute for assessment will expire on [REDACTED]. Based upon the preceding, our office recommends that:

1. the Examination Division make a determination regarding whether the TPH and taxpayer wife filed a joint return for the year in question;
2. if an agreement regarding each taxpayers' determined tax liability cannot be reached, a notice of deficiency setting forth the Commissioner's determination should be issued to both the TPH and taxpayer wife prior to [REDACTED];
3. regardless of what filing determination is made, [i.e. non-filer or married filing joint] the Commissioner should as an alternative position set forth within each respective notice the deficiency the tax that is due from the taxpayer based upon an alternative filing determination.

For example, if the Commissioner determines that the TPH did not sign or authorize the purported joint return in question, the Commissioner will make a non-filer deficiency determination regarding the TPH. In addition to such non-filer deficiency determination, the Commissioner should, as an alternative position, make a determination regarding the joint deficiency that is due from the TPH based upon a finding that the TPH filed the purported joint return. A corresponding and consistent determination should be made with respect to the taxpayer wife. It is our opinion that by setting forth the Commissioner's primary and alternative positions within the notice of

deficiency, the Commissioner will be afforded some measure of protection if the TPH argues in a subsequent Tax Court proceeding that the Commissioner's deficiency determination is in error because of an erroneous return filing determination. At this time, our office will be closing its file on this matter. If you need any additional assistance, please feel free to contact us.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

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By:

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